

ATTACHMENT 2

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Brian J. Moline, Chair
 Robert E. Krehbiel
 Michael C. Moffet

In the Matter of the Application of ALLTEL)
Kansas Limited Partnership for Designation) Docket No. 04-ALKT-283-ETC
as an Eligible Telecommunications Carrier)
Pursuant to Section 47 U.S.C. § 214(e)(2))
of the Communications Act of 1934.)

**ORDER GRANTING ETC DESIGNATION
AND ADDRESSING ADDITIONAL ISSUES**

NOW COMES the above-captioned matter for consideration and determination by the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records and being fully advised in the premises, the Commission finds and concludes as follows:

1. On September 19, 2003, ALLTEL Kansas Limited Partnership (ALLTEL) filed an application seeking designation as an Eligible Telecommunications Carrier (ETC) for all available support from the Federal Universal Service Fund (FUSF) including, but not limited to, support for rural, insular and high-cost areas and low-income customers. The application included a request for redefinition of the service area of some rural carriers. On April 13, 2004, ALLTEL filed an amended application that excluded the request for redefinition of the service area of some rural carriers.

2. Southwestern Bell Telephone Company (SWBT), Independent Telecommunications Group, Columbus et al. (ITG), and the State Independent Alliance (SIA) intervened in the docket.

3. On February 13, 2004, the Commission issued an Order setting out a procedural schedule. Commission Staff (Staff) and interveners were to file rebuttal testimony on April 6, 2004. Applicant was to file surrebuttal testimony and Staff and Intervenors cross-answering testimony was to be filed on April 23, 2004.

4. On April 6, 2004, Staff and ITG filed rebuttal testimony. On April 23, 2004, ALLTEL filed cross answering testimony. Likewise, Staff and ITG filed surrebuttal testimony.

5. A technical hearing commenced on June 1, 2004. Mark Johnson represented ALLTEL. Bruce Ney represented SWBT. Thomas E. Gleason represented ITG. Mark Caplinger represented SIA. Robert Lehr represented Staff and the public generally. Lawrence J. Krajci, Kent Steinbach, and Steve Mowery testified on behalf of ALLTEL. Paul Cooper testified on behalf of ITG. Christine Aarnes testified on behalf of Staff.

Federal ETC Requirements

6. Section 214(e) of the Federal Telecommunications Act of 1996 (Federal Act) discusses the requirements that a company must meet in order to be designated an ETC and the role of this Commission in making the ETC determination. Section 214(e)(1)-(2) of 47 U.S.C. § 214(e)(1)-(2) states:

(c) Provision of Universal Service.

(1) Eligible telecommunications carrier. – A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received-

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carriers' services

(including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

(2) ...upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirement of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. 47 U.S.C. § 214(e)(1)-(2).

Therefore, before designating ALLTEL as an ETC in the requested service areas, the Commission must determine:

- a) whether ALLTEL is offering or will be able to offer the supported services using its own facilities or a combination of its own facilities and resale;
- b) whether ALLTEL will offer those services throughout the requested service areas;
- c) whether ALLTEL will advertise the services through media of general distribution; and,
- d) whether designating ALLTEL as an ETC in a service area served by a rural carrier is in the public interest.

7. Section 214(e)(5) of the Federal Act defines "service area" as:

The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the [Federal Communications] Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted

under section 410(c), establish a different definition of service area for such company.

“Service areas” or “operating areas” are defined by the state act in K.S.A. 66-1,187(k). K.S.A. 66-1,187(k) provides that:

- (1) In the case of a rural telephone company, operating area or service area means such company’s study area or areas as approved by the federal communications commission;
- (2) in the case of a local exchange carrier, other than a rural telephone company, operating area or service area means such carrier’s local exchange service area or areas as approved by the commission.

Thus, to be designated as an ETC, a carrier must offer its services throughout a rural telephone company’s entire study area, unless this Commission and the FCC approve a different service area. Wire centers are the service area currently designated by the Commission for universal service support for areas served by non-rural telephone companies.¹ ALLTEL has withdrawn its request for redefinition of study areas.² Therefore, the Commission will not address redefinition issues in this order.

ALLTEL’s Ability To Meet Federal ETC Requirements

Common Carrier Status

8. In order to be designated as an ETC, a company must be a common carrier as defined in Section 153(10) of the Federal Act. A common carrier is defined as: “[A]ny person engaged as a common carrier for hire, in interstate or foreign communication by wire or

¹ See In the Matter of an Investigation Into the Kansas Universal Service Fund (KUSF) Mechanism for the Purpose of Modifying the KUSF and Establishing a Cost-Based Fund, Docket No. 99-GIMT-326-GIT, Order#10, released September 30, 1999, ¶56.

² Amended Application of ALLTEL Kansas Limited Partnership for Designation as an Eligible Telecommunications Carrier in the State of Kansas. Filed April 13, 2004, at p. 6. (Amended Application for ETC Designation)

radio...”³ ALLTEL states that it meets this requirement because the FCC has determined that cellular service is a common carrier service in its regulations at 47 C.F.R. §20.9(a)(7).⁴ No party disputes ALLTEL’s claim. Thus, the Commission finds that ALLTEL is a common carrier eligible to be designated as an ETC if the company meets all other requirements.

Services or Functionalities

9. In its Amended Application for ETC Designation, ALLTEL states that it will provide service using its own cellular network infrastructure, including its wireless antennas, cell-cites, trunking and switching facilities, towers and interconnection facilities.⁵ ALLTEL indicates that the company is a common carrier licensed by the FCC to provide cellular telecommunications services in several Rural Service Areas (RSAs).⁶ ALLTEL’s licensed serviced area includes all fifteen Kansas RSAs, those being: (1) Cheyenne, Kansas; (2) Norton, Kansas; (3) Jewell, Kansas; (4) Marshall, Kansas; (5) Brown, Kansas; (6) Wallace, Kansas; (7) Trego, Kansas; (8) Ellsworth, Kansas; (9) Morris, Kansas; (10) Franklin, Kansas; (11) Hamilton, Kansas; (12) Hodgeman, Kansas; (13) Edwards, Kansas; (14) Reno, Kansas; and (15) Elk, Kansas.⁷ Currently, ALLTEL’s Kansas network includes 197 cell sites that are connected to its main switching location in Moundridge.⁸

10. Based on the Federal-State Joint Board recommendations under Section 254(c), the FCC defined “universal service” in 47 C.F.R. § 54.101(a). “Universal service” is defined as including the following services or functionalities: (1) voice-grade access to the public switched network; (2) local usage; (3) dual-tone multi-frequency (DTMF); (4) single-party service or its

³ 47 U.S.C. § 153(10) (2004).

⁴ Amended Application for ETC Designation. Exhibit B, paragraph 4.; *See also* Direct Testimony of Lawrence J. Krajci. Filed February 24, 2004, at p. 6, l. 18-23. (Krajci Direct)

⁵ Amended Application for ETC Designation, at p. 2, 5.

⁶ Amended Application for ETC Designation. Exhibit B, paragraph 4.

⁷ Amended Application for ETC Designation. Exhibit A

⁸ Surrebuttal Testimony of Kent Steinbach. Filed April 23, 2004, at p. 1, l. 22 – 24. (Steinbach Surrebuttal)

functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. Based on Section 214 (e)(1)(A) of the Federal Act and 47 C.F.R. § 54.201(d)(1), a carrier must provide all specified services or functionalities to receive designation as an ETC, which then makes the carrier eligible to receive federal universal support funds. Each service or functionality is discussed, more fully, below.

11. 47 C.F.R. § 54.101(a)(1) states that voice grade access to the public switched network is a universal service that should be supported through the federal universal service mechanism.⁹ ALLTEL states it meets this requirement by providing voice-grade access to the public switched network through interconnection arrangements with LECs. All customers of ALLTEL are able to make and receive calls with a bandwidth of approximately 2700 Hertz.¹⁰ ALLTEL's ability to provide this service is not disputed. The Commission finds ALLTEL provides voice grade access to the public switched network and is in compliance with FCC rule 54.101(a)(1).

12. 47 C.F.R. § 54.101(a)(2) provides that local usage shall be supported by Federal universal service support.¹¹ ALLTEL states that it will meet the local usage requirements by including substantial local usage in all of its rate plans and that it will comply with any minimum local usage requirements established by the FCC.¹² ITG's witness, Mr. Paul Cooper, questions

⁹ Voice grade access is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. Voice grade access shall occur, at a minimum, within the frequency range between 300 Hertz and 3,000 Hertz.

¹⁰ Amended Application for ETC Designation. Exhibit B, paragraph 5(a).; *See also* Krajci Direct, at p. 3, l. 6-15

¹¹ Local usage means that a carrier provides an amount of minutes of use of local exchange service, prescribed by the Federal Communications Commission (FCC), without a usage charge to end-users. 47 C.F.R. §54.101(a)(2).

¹² Amended Application for ETC Designation. Exhibit B, paragraph 5(b).; *See also* Krajci Direct, at p. 3, l. 16 – p. 4, l. 11.

whether ALLTEL's service plans offer a sufficient level of local usage at a reasonable rate.¹³ The FCC initiated a proceeding to identify a minimum amount of local usage required to be included in a universal service offering.¹⁴ The FCC has not rendered a decision in that proceeding. However, if the FCC does provide a decision on this issue, all ETCs will be required to comply with any minimum local usage requirements adopted by the FCC. In addition, the Fifth Circuit Court of Appeals determined that states may impose additional eligibility requirements on carriers otherwise eligible to receive federal universal service support.¹⁵ Therefore, if the Commission, independent of an FCC decision, later requires a minimum amount of local usage, all ETCs will be required to comply with any minimum local usage requirements. The Commission finds that ALLTEL will offer local usage in compliance with current FCC requirements. The Commission concludes that ALLTEL is in compliance with FCC rule 54.101(a)(2).

13. 47 C.F.R. § 54.101(a)(3) provides that dual tone multi-frequency ("DTMF") signaling or its functional equivalent shall be supported by Federal universal service funds.¹⁶ Therefore, ALLTEL must provide DTMF signaling or its functional equivalent in order to be designated as an ETC. ALLTEL states that it currently uses out-of-band digital signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling.¹⁷ The parties do not dispute that ALLTEL provides the functional equivalent of DTMF signaling. The Commission concludes that ALLTEL is in compliance with FCC rule 54.101(a)(3).

¹³ Rebuttal Testimony of Paul L. Cooper. Filed April 6, 2004, at p. 6, l. 5- 7. (Cooper Rebuttal)

¹⁴ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, FCC 97-157 (May 8, 1997), ¶ 67 ("Universal Service Order"); *Universal Service Further Notice of Proposed Rulemaking*, FCC 98-278 (October 26, 1998) ("NPRM").

¹⁵ *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999).

¹⁶ Dual tone multi-frequency signaling is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time. 47 C.F.R. §54.101(a)(3).

¹⁷ Amended Application for ETC Designation. Exhibit B, paragraph 5(c); *See also* Krajci Direct, at p. 4, l. 12 -- 20.

14. 47 C.F.R. § 54.101(a)(4) provides that single-party service or its functional equivalent shall be supported by Federal universal service funds.¹⁸ ALLTEL states that it meets this requirement by providing a dedicated path for the length of all customer calls.¹⁹ All of its “loops” are single party connections. ALLTEL’s ability to provide single party service is not disputed. The Commission concludes that ALLTEL is in compliance with FCC rule 54.101(a)(4).

15. 47 C.F.R. § 54.101(a)(5) provides that access to emergency services, including access to 911 and enhanced 911, shall be supported by Federal universal service funds.²⁰ ALLTEL states that it currently provides all of its customers with access to emergency service by dialing 911 in satisfaction of this requirement.²¹ The FCC has stated that wireless companies are not required to provide all of the E911 services until a local emergency service provider makes arrangements for the delivery of ALI and ANI from carriers and establishes a cost recovery mechanism.²² ALLTEL indicates that it provides, or will provide Phase I and Phase II, E911 services following deployment schedules agreed on by ALLTEL and the local emergency service provider. ALLTEL’s ability to provide access to emergency services is not disputed. The Commission finds that ALLTEL provides access to emergency services as currently defined by the FCC rules. The Commission concludes ALLTEL is in compliance with FCC rule

¹⁸ Single-party service is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user’s particular transmission

¹⁹ Amended Application for ETC Designation. Exhibit B, paragraph 5(d).; *See also* Krajci Direct, at p. 4, l. 21-28.

²⁰ Access to emergency services includes access to 911 and enhanced 911 (E911) services, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code (911) to call emergency services through a Public Service Access Point (PSAP) operated by the local government. E911 is defined as 911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, automatic location information (ALI) which permits emergency service providers to identify the geographic location of the calling party. Access to emergency services includes access to 911 and E911 service to the extent the local government in an eligible carrier’s service area has implemented 911 or E911 systems. 47 C.F.R. § 54.101(a)(5).

²¹ Amended Application for ETC Designation. Exhibit B, paragraph 5(e).; *See also* Krajci Direct, at p. 5, l. 1-11.

²² Universal Service Order at ¶ 73.

54.101(a)(5). ALLTEL will be required to provide all of the E911 services when a local emergency service provider makes arrangements for the delivery of ALI and ANI from carriers.

16. 47 C.F.R. § 54.101(a)(6) provides that access to operator services shall be supported by Federal universal service funds.²³ ALLTEL states that it meets this requirement by providing all of its customers with access to operator services supplied by either the company or other entities (e.g., local exchange carriers (LECs), interexchange carriers (IXCs), etc.).²⁴ No party disputes ALLTEL's ability to provide access to operator services. The Commission finds that ALLTEL provides access to operator services. The Commission concludes that ALLTEL is in compliance with FCC rule 54.101(a)(6).

17. 47 C.F.R. § 54.101(a)(7) provides that access to interexchange services shall be supported by federal universal service funds.²⁵ The FCC indicated the rule states that *access* to interexchange services must be provided, but *not equal access* to those services.²⁶ ALLTEL states that it currently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the company has with several IXCs.²⁷ No party disputes ALLTEL's ability to provide access to interexchange service. The Commission finds that ALLTEL provides access to interexchange service. The Commission concludes that ALLTEL is in compliance with FCC rule 54.101(a)(7).

²³ Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call. 47 C.F.R. 54.101(a)(6).

²⁴ Amended Application for ETC Designation. Exhibit B, paragraph 5(f).; *See also* Krajci Direct, at p. 5, l. 12-17.

²⁵ Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network. 47 C.F.R. §54.101(a)(7).

²⁶ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order (rel. January 22, 2004). Paragraph 21. (Virginia Cellular Order)

²⁷ Amended Application for ETC Designation. Exhibit B, paragraph 5(g).; *See also* Krajci Direct, at p. 5, l. 18 – 25.

18. 47 C.F.R. § 54.101(a)(8) provides that access to directory assistance shall be supported by Federal universal service funds.²⁸ ALLTEL states that it meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212.”²⁹ No party disputes ALLTEL’s ability to provide access to directory assistance. The Commission finds that ALLTEL provides access to directory assistance. The Commission concludes that ALLTEL is in compliance with FCC rule 54.101(a)(8).

19. 47 C.F.R. § 54.101(a)(9) provides that toll limitation for qualifying low-income consumers shall be supported by Federal universal service funds.³⁰ Thus, an ETC must offer either “toll control”³¹ or “toll blocking”³² services to qualifying Lifeline customers at no additional charge. ALLTEL states that while it currently has the ability to provide toll blocking, it currently has no Lifeline customers because only carriers designated as ETCs can participate in the federal Lifeline program. Once designated as an ETC, ALLTEL will participate in Lifeline as required, and will provide toll blocking capability to its Lifeline customers at no charge as part of its universal service offerings.³³ Mr. Cooper contends that the premise behind this requirement is to aid Lifeline customers in avoiding per-minute charges that increase their bill beyond the customers’ ability to pay.³⁴ For landline service, it is primarily the case that, only toll calls are billed per minute. However, for wireless service, it is possible that a Lifeline customer could incur per minute charges for local service if the customer exceeds the number of minutes

²⁸ Access to directory assistance' is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings. 47 C.F.R. §54.101(a)(8).

²⁹ Amended Application for ETC Designation. Exhibit B, paragraph 5(h).; *See also* Krajci Direct, at p. 5, l. 26 – p. 6, l. 2.

³⁰ Toll limitation is denoted by either toll blocking or toll control for eligible telecommunications carriers that are incapable of providing both services. For eligible telecommunications carriers that are capable of providing both services, “toll limitation” denotes both toll blocking and toll control.

³¹ “Toll control” is a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle. 47 C.F.R. § 54.400(c).

³² “Toll blocking” is a service provided by carriers that lets consumers elect to not allow the completion of outgoing toll calls from their telecommunications channel. 47 C.F.R. §54.400(b).

³³ Amended Application for ETC Designation. Exhibit B, paragraph 5(i).; *See also* Krajci Direct, at p. 6, l. 3 – 16.

³⁴ Cooper Rebuttal, at p. 10, l. 3-5.

included in the customer's plan. Thus, Mr. Cooper suggests that a wireless ETC be required to provide per-minute blocking in addition to toll blocking.³⁵ Staff suggests the Commission examine this proposal in a generic proceeding.³⁶ Mr. Cooper's suggestion will be addressed in a generic proceeding discussed later in this order. If the Commission subsequently requires per-minute blocking for Lifeline customers, all ETCs for whom the requirement applies, including ALLTEL, will be required to comply with any per-minute blocking requirement. Until such time, ALLTEL complies with the obligations of 47 C.F.R. § 54.101(a)(9).

20. The Commission concludes that ALLTEL is in compliance with 47 C.F.R. § 54.201(d)(1) because it offers each of the services or functions supported by federal universal service support mechanisms in 47 C.F.R. § 54.101(a).

Provision of Service Throughout the Service Area

21. ALLTEL indicates the company will offer service throughout the service areas in which it is designated as an ETC using its own facilities.³⁷ However, Staff witness Ms. Aarnes, states ALLTEL has developed a step by step decision-making process that it intends to use to evaluate whether ALLTEL can commit to serving remotely located customers.³⁸ Staff expressed concern regarding ALLTEL's commitment to serving customers throughout the designated service area. Staff recommended that ALLTEL be required to file reports with the Commission detailing the geographic area covered by the company's current infrastructure in service areas where it is designated as an ETC. These reports should provide detail regarding the manner in which ALLTEL will provide service in areas its current infrastructure does not serve; should provide detail regarding the ability of a resold service of a wireless carrier to meet the Federal

³⁵ *Id.* at p. 10, l. 5-7.

³⁶ Rebuttal Testimony of Christine Aarnes. Filed April 6, 2004, at p. 9 l. 8 – p. 10, l. 5. (Aarnes Rebuttal)

³⁷ Amended Application for ETC Designation, at p. 2.

³⁸ Aarnes Rebuttal, at p. 11, l. 15 – p. 12, l. 30.

ETC requirements; and should provide detail concerning its plan, if any, to utilize the resold services of an ILEC.³⁹ ITG shared this concern, suggesting that, “[ALLTEL] should not be designated as an ETC until it provides the data requested by Staff and until Staff confirms that the information provided demonstrates [ALLTEL’s] commitment to provide the supported services to any customer requesting [ALLTEL’s] supported services.”⁴⁰ SWBT also expressed concern regarding ALLTEL’s commitment to serve all requesting customers.⁴¹

22. ALLTEL suggests that, “there should be no absolute requirement to serve, because there are limited instances where it is physically impossible or overly cost prohibitive to provide service.”⁴² The company states that it will follow the provisioning requirements established in the Virginia Cellular proceeding which should be sufficient to provide service to most requesting customers.⁴³ ALLTEL indicates it will notify the Commission if the company cannot provide service to a requesting customer.⁴⁴ The company suggests the Commission should be “satisfied that ALLTEL is aware of Staff’s concern about service provision, and ALLTEL will undertake significant efforts to meet that obligation.”⁴⁵

23. Section 214(e)(1)(A) requires an ETC to provide the services for which federal support is made available throughout the service area for which the designation is received. The language is clear. The Commission has concerns with ALLTEL’s commitment to provide service throughout the designated service area. As noted by SWBT, Section 214 does not limit the requirement to serve to customers for which it is not overly cost prohibitive to serve.⁴⁶

Service is to be provided *throughout* the service area. Therefore, the Commission will place two

³⁹ Aarnes Rebuttal, at p. 15, l. 1 – p. 16, l. 2.

⁴⁰ Cross Answering Testimony of Paul L. Cooper. Filed April 23, 2004, at p. 4, l. 6-9. (Cooper Cross Answering)

⁴¹ Post Hearing Reply Brief of SWBT. Filed July 22, 2004. Paragraphs 3 – 8. (SWBT Reply Brief)

⁴² Surrebuttal Testimony of Lawrence J. Krajci. Filed April 23, 2004, at p. 8, l. 10 – 12. (Krajci Surrebuttal)

⁴³ Krajci Surrebuttal, at p. 8, l. 12 – 15.

⁴⁴ Post-Hearing Brief of ALLTEL Kansas Limited Partnership. Filed July 7, 2004. Paragraph 37. (ALLTEL Brief)

⁴⁵ *Id.*

⁴⁶ SWBT Reply Brief, at p. 2, paragraph 3.

requirements on ALLTEL in addition to its commitment to follow the seven-part evaluation process.

24. The Commission believes it has jurisdiction to place requirements on an ETC consistent with the Fifth Circuit Court of Appeals decision which determined that states may impose additional eligibility requirements on carriers otherwise eligible to receive federal universal service support.⁴⁷ First, the Commission requires ALLTEL to file a map, within 60 days of the effective date of this order, indicating the extent of its existing infrastructure and the approximate geographic area for which service coverage is available from such facilities. Thereafter, the map should be updated on a yearly basis and provided to the Commission by December 31 of each year. The Commission does not believe this requirement is unreasonable or in violation of Section 253(a). This is a type of business record that the company can reasonably be expected to maintain for its own business purposes, and cannot be reasonably construed as a barrier to entry. Rather it is a reasonable means for the Commission to determine where coverage is available for a requesting customer and to monitor ALLTEL's progress toward meeting the requests of customers for service.

25. Currently, any utility owning or operating one or more telecommunication supply lines must annually file a map or maps showing routes of all existing telecommunications supply lines. See K.A.R. 82-12-7(b). Thus, other ETCs are subject to similar reporting requirements. Imposing this requirement does not mean the Commission believes that ALLTEL must have the immediate ability to serve every customer in the service areas where it receives ETC designation. The Commission is cognizant that it will take time for ALLTEL to expand its network. This requirement should not be viewed as a Commission requirement to replicate wireline service. While the Commission does believe one of the purposes of designating additional ETCs is to

⁴⁷ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999).

provide consumers with competitive choices, that does not mean one competitive ETC must replicate the entire wireline network. However, the ETC must be willing to provide service throughout the service area for which it is designated an ETC with either its own facilities or through resale. Again, the map is an aid for the Commission to use in evaluating ALLTEL's progress in meeting this requirement. Additionally, on a quarterly basis ALLTEL is required to report all instances in which the company refuses to serve a customer (January 1, April 1, July 1 and October 1). ALLTEL will be required to provide information regarding the specific location of the customer (street address), the company's rationale for reaching the final step of the process for each customer, and the company's progress with establishing interconnection arrangements which permit resale of either wireless or ILEC services in the customer's location. The Commission also believes the subsequently imposed advertising requirement will inform customers of ALLTEL's obligation to serve. Thus, customers will be able to file complaints with the Commission. The information will also assist the Commission in determining the reasonableness of complaints.

Advertising

26. ALLTEL indicates that on designation as an ETC, it shall advertise the availability of its service offerings throughout the proposed service area. The methods of advertising may include newspaper, television and radio advertisements.⁴⁸ In response to a request for information, ALLTEL specified that it intended to advertise 52 weeks per year on radio stations serving 14 counties and advertise in 16 newspapers serving Kansas consumers. The company also indicated that information would be available in ALLTEL store locations and on its web site.⁴⁹ No party contests ALLTEL's commitment to advertise its services. It is

⁴⁸ Krajci Direct, at p. 7, l. 1 – 3.

⁴⁹ Aarnes Rebuttal, p. 10, l. 15-19.

reasonable to expect that ALLTEL will meet this requirement because it receives support only to the extent that it gains and retains customers.

27. Staff recommends the Commission further examine imposing more specific advertising requirements on all ETCs. Staff suggests that advertising emphasizes an ETC's universal service obligation including the offering of service to all consumers in the service area.⁵⁰ Staff did not specifically recommend placing additional advertising requirements on ALLTEL in this docket, the Commission believes it is a reasonable requirement. Again, the Fifth Circuit Court of Appeals determined that states may impose additional eligibility requirements on carriers otherwise eligible to receive federal universal service support. The Commission directs Staff and ALLTEL to develop language to be used in all advertising for areas in which ALLTEL is designated as an ETC. The language should include information directing customers to the Commission's Office of Public Affairs and Consumer Protection for complaints regarding any service issues. Staff and ALLTEL shall file a status report with the Commission within 90 days of the effective date of this Order informing the Commission of progress in meeting this requirement.

Designation of ALLTEL as an ETC in Non-rural Service Areas

28. Section 214(e)(2) of the Federal Act, states:

Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and *shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission*, so long as each additional requesting carrier meets the requirement of paragraph (1). [emphasis added]

⁵⁰ Aarnes Rebuttal, at p. 11, l. 3 – 9.

The language of the Federal Act states that a commission “shall” designate additional ETCs in non-rural service areas if the applicant will provide the required services. The Commission has concluded that ALLTEL is capable of providing the nine supported services and will advertise the availability of its service throughout the designated service area. In prior cases, the Commission has interpreted the use of the word “shall” as leaving the Commission no discretion in designating an ETC in non-rural areas if all supported services were offered and advertised throughout the service area. However, SWBT suggests that the FCC has modified its interpretation of this language.⁵¹ In the Virginia Cellular proceeding, the FCC stated:

[T]he Bureau previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act. We do not believe that designation of an additional ETC in a non-rural telephone company’s study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance.⁵²

Further, the FCC concluded that because Virginia Cellular had met the more rigorous public interest analysis for the rural study areas, it had also shown its commitments satisfy the public interest requirements for non-rural areas.⁵³ Below, the Commission addresses the public interest analysis regarding ALLTEL’s designation as an ETC in rural areas. As will be detailed below, the Commission finds it is in the public interest to designate ALLTEL as an additional ETC in rural service areas so long as ALLTEL agrees to the additional requirements imposed by this order. Thus, the Commission finds that ALLTEL has met all the requirements set out in the Federal Act to be designated as an ETC and it is in the public interest to designate ALLTEL as

⁵¹ SWBT Reply Brief. Paragraphs 11 – 13.

⁵² Virginia Cellular Order. Paragraph 27.

⁵³ *Id.*

an ETC in the non-rural service areas, as delineated by this Commission, so long as ALLTEL agrees to the additional requirements imposed by this Order.

29. The only non-rural ILEC service areas at issue in this proceeding are those served by SWBT. Section 214(e)(5) of the Federal Act defines “service area” as, “a geographic area *established by a State commission for the purpose of determining universal service obligations and support mechanisms.*” [emphasis added] The Commission previously determined that non-rural service areas are to be the wire centers in the service territories of non-rural ILECs. Additionally, federal support is provided to non-rural ILECs on a wire center basis. Initially, ALLTEL requested that it be designated as an ETC in any non-rural area that fell within its license footprint.⁵⁴ However, ALLTEL amended its request to include only those SWBT wire centers in which ALLTEL’s license area covers SWBT’s wire centers in their entirety. In revising its request, ALLTEL states that it is “. . . operationally and administratively more efficient to limit its ETC designation to areas no smaller than an entire wire center. This is also consistent with FCC policy and actions.”⁵⁵ In response to a Staff Data Request, ALLTEL indicated the company was no longer seeking designation in the SWBT wire centers that ALLTEL partially serves.⁵⁶ Staff suggests it is appropriate to designate ALLTEL as an ETC in those SWBT wire centers ALLTEL can entirely serve. Staff testified there are 92 SWBT wire centers in which ALLTEL can be designated as an ETC.⁵⁷ The Commission finds that ALLTEL will be designated as an ETC in the SWBT wire centers listed in Attachment A to this Order, if the company agrees to the additional requirements imposed by this Order.

⁵⁴ Aarnes Rebuttal, at p. 19, l. 13 – 16.

⁵⁵ Krajci Direct, at p. 12, l. 7-9.; See also Transcript, at p. 23, l. 17-20.

⁵⁶ Aarnes Rebuttal, at p. 20, l. 1 – 4.

⁵⁷ *Id.* at p. 18, l. 22-23.

Public Interest Analysis

Public Interest Criteria

30. For service areas of rural companies, the Commission must make a finding that designating an additional ETC is in the public interest. In Docket No. 99-GCCZ-156-ETC, the Commission established a rebuttable presumption that it is in the public interest to designate additional ETCs in the areas served by rural telephone companies. The Commission stated:

The Commission must be guided by K.S.A. 1999 Supp. 66-2001 when making determinations that affect telecommunications customers in Kansas. The clear and unmistakable public policy imperative from both the federal and state legislatures is that competition is a goal, even in rural areas. Arguments have been made that competition is not in the public interest in any rural telephone company service area because it may jeopardize universal service. However, there had been no basis presented for reaching the broad conclusion that competition and universal service are never able to exist together in rural areas. The Commission does not accept the assertion that designating additional ETCs in rural areas will necessarily threaten universal service. The benefits of competition and customer choice are available to Kansans living in non-rural areas. General concerns and speculation are not sufficient justification for adopting a policy that would result in benefits and services that are available to other Kansans not also being available to rural telephone customers. **The Commission finds, as a general principle, that allowing additional ETCs to be designated in rural telephone company service areas is in the public interest.**

This general public interest finding is a presumption which may be rebutted by individual rural telephone companies. The Commission has the discretion to find that in a particular discrete rural area, competition is not in the public interest. The obligation to establish that additional ETCs are not in the public interest is on the rural telephone company serving that area. Such a determination must be based on the facts shown to exist in a specific study area. [emphasis added]⁵⁸

31. However, Ms. Aarnes states the FCC recently found, in the Virginia Cellular proceeding that considering only the value of competition is not sufficient in making a public

⁵⁸ *In the Matter of GCC License Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. 99-GCCZ-156-ETC, May 19, 2000 Order, pp.3-4 ("Western Wireless Order").

interest finding.⁵⁹ While noting that the Commission is not bound by the FCC's determination (discussed later), Staff believes the factors examined by the FCC in the Virginia Cellular proceeding are reasonable for the Commission to consider along with specific information from rural companies regarding the impact of an additional ETC designation in a rural service area.⁶⁰

32. ITG argues that designating ALLTEL as an ETC is not in the public interest.⁶¹ Through the testimony of Mr. Cooper, ITG suggests that ALLTEL should be required to meet the public interest requirements established in the Virginia Cellular proceeding, the public interest recommendations of the Federal-State Joint Board on Universal Service (Joint Board), and the additional public interest analysis provided by Mr. Cooper.⁶² Mr. Cooper suggests that ALLTEL has the burden of proof to demonstrate that its ETC designation is in the public interest.⁶³ Mr. Cooper suggested that, in addition to the Virginia Cellular criteria, the Commission should follow the recommendations of the Joint Board and examine the financial resources of the applicant, the capacity and commitment of the applicant to provide service throughout the service area, the ability to provide equal access, the ability of the applicant to remain functional in emergencies, the cost and benefits associated with support flowing to an additional ETC, and the amount of local usage provided by the applicant.⁶⁴

33. ALLTEL argues the Commission established a rebuttable presumption that it is in the public interest to designate additional ETCs in the service areas of rural companies.⁶⁵ The

⁵⁹ Aarnes Rebuttal, at p. 48, l. 16 – 18.

⁶⁰ *Id.* at p. 49, l. 1 – 7.

⁶¹ Cooper Rebuttal, at p. 5, l. 5 – 7.

⁶² *Id.* at p. 5, l. 9 – 12.

⁶³ *Id.* at p. 4, l. 14 – 16.

⁶⁴ *Id.* at p. 35, l. 14 – p. 39, l. 9.

⁶⁵ ALLTEL Brief. Paragraph 27.

company noted that the Commission is not bound by the FCC's Virginia Cellular Order but

ALLTEL believes it meets the FCC's criteria.⁶⁶ Additionally, the company notes:

ALLTEL can conceive of no business plan for remote rural areas which supports deploying the type of robust wireless network required to compete on a level playing field with incumbent carriers without federal USF support. Wireless telephone service today is a convenience, but in most rural areas it cannot be counted on as a potential replacement for wireline service unless high cost loop support is made available to drive infrastructure investment. . . . Provision of high cost support to ALLTEL will begin to level the playing field with the incumbent LECs and make available for the first time a potential competitor for primary telephone service in remote areas of Kansas.⁶⁷

34. As previously mentioned, during the course of this proceeding the FCC adopted several criteria to be used in evaluating public interest findings for rural company service areas in its Virginia Cellular Order.⁶⁸ In that order, the FCC states:

We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame.⁶⁹

While the FCC's Virginia Cellular decision is not binding on this Commission, the Commission finds that examining of the additional factors enumerated in the FCC's order is reasonable. Because this proceeding involves designating ALLTEL as an ETC only for access to Federal

⁶⁶ Krajci Surrebuttal. Page 6, lines 7 – 15.; See also ALLTEL Brief. Paragraph 32.

⁶⁷ Amended Application for ETC Designation, at p. 8.

⁶⁸ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order (rel. January 22, 2004) (Virginia Cellular Order)

⁶⁹ Virginia Cellular Order. paragraph 4.

USF support, the Commission believes following the FCC's lead in this matter is the prudent course. Although ITG suggests other factors for consideration, at this time, the Commission will only adopt the analytical framework outlined by the FCC. To the extent the FCC's public interest test incorporates the concerns of ITG, those issues will be addressed.

Benefits of Increased Competitive Choice

35. ALLTEL states that designating the company as an ETC will bring consumers expanded choice of services and service providers, provide an incentive for improvements in service quality and bring about innovation.⁷⁰ Mr. Steve Mowery, witness for ALLTEL, states the company will use the federal universal service support it receives to expand its network capacity and upgrade facilities, enabling the company to provide more dependable service which will provide consumers with an "attractive competitive service option."⁷¹ Staff agrees with ALLTEL stating that Kansas consumers will benefit from increased competition through pricing, service quality, customer service, etc.⁷² ITG suggests that because ALLTEL is already providing services, without ETC designation, thus no new benefits will accrue.⁷³

36. The evidence presented supports a Commission finding that designating ALLTEL as an ETC in rural service areas will provide benefits flowing from increased customer choice. The motive for moving toward a competitive telecommunications market has been supported by the economic argument that competitive alternatives will result in customers making choices among service providers which will, ultimately, lead to lower prices and better service for consumers. Nothing in this proceeding persuades the Commission that these general arguments are invalid in the service areas in which ETC designation is requested. ALLTEL has testified

⁷⁰ Krajci Surrebuttal, at p. 6, l. 16-18.

⁷¹ Surrebuttal Testimony of Steve Mowery. Filed April 23, 2004, at p. 6, l. 18 – p. 7, l. 3. (Mowery Surrebuttal)

⁷² Aarnes Regbuttal, at p 49, l. 18 – 20.

⁷³ Cooper Rebuttal, at p. 5, l. 13 – 16.

that it will expand and improve its network leading to additional competitive options in the state.⁷⁴ While ITG asserts that ALLTEL is already offering some service options in some rural areas of the state, ALLTEL will be able to expand its service offerings to other rural areas if designated as an ETC. Mr. Krajci states the company will build additional facilities, increase the number of areas in which ALLTEL can provide service, improve service in areas it currently serves, and provide new service enhancements.⁷⁵ The Commission believes improvement and expansion of the existing network will bring new competitive benefits to both ALLTEL's current customers and those that will be able to utilize ALLTEL's service for the first time. The Commission also concludes that the requirement imposed on ALLTEL to provide the Commission with coverage maps will assist the Commission in monitoring the expansion of coverage to new areas of the state and confirm that there are benefits from competitive options.

Impact of Multiple Designations on the Universal Service Fund

37. Ms. Aarnes testifies that based on projections ALLTEL provided in response to a data request, the company will be eligible to receive \$29 million annually.⁷⁶ This amount is approximately .80 percent of the federal level of high-cost support.⁷⁷ Staff is concerned about the burden being placed on the federal fund but notes that the FCC is considering measures, other than limiting the number of ETCs eligible for support, that could be taken to limit the growth of the federal fund.⁷⁸ ALLTEL argues Congress intended for competitive ETCs to have access to the fund by including ETC provisions in the Federal Act. Further, most growth in the fund has occurred because of the need to meet high-cost support requirements of ILECs.⁷⁹ ITG

⁷⁴Krajci Direct, at p. 10, l. 6 – p. 11, l. 6.; *See also* Transcript, at p. 11, l. 3 – 6, p. 26, l. 15-25.

⁷⁵ *Id.* at p. 10, l. 6 – p. 11, l. 6.

⁷⁶ Aarnes Rebuttal, at p. 50, l. 14 – 15.

⁷⁷ *Id.* at p. 50, l. 16.

⁷⁸ *Id.* at p. 50, l. 16 – 25.

⁷⁹ Mowery Surebuttal, at p. 14, l. 5 - 19.

argues that ALLTEL has not established a cost-based need for support and therefore it must be presumed that designating ALLTEL as an ETC will have a negative impact on the fund.⁸⁰ Mr. Cooper suggests the rates charged by ALLTEL exceed his estimate of the cost per line; therefore, ALLTEL does not need high-cost support.⁸¹ ALLTEL suggests that Mr. Cooper's needs-based analysis is irrelevant because the FCC states federal universal service support provided to an ILEC, is portable on a per line basis to a competitive provider.⁸² ITG also suggests that the Commission should evaluate the impact of other potential requests for ETC designation when considering the impact on the fund.

38. In reviewing the Virginia Cellular Order, the FCC has not established that a competitive ETC is required to prove it has a cost-based need for support. Further, because the FCC presently ports the ILEC's per-line support to competitive ETCs, it seems unlikely the FCC intends for need to be considered in conjunction with this public interest criterion. Thus, the Commission does not believe ITG's comments are relevant in this instance. Additionally, the FCC indicates it will consider the impact of an ETC applicant receiving funds, not the impact of all potential ETC applicants. In the Virginia Cellular Order, the FCC states its rulemaking process ". . . will provide a framework for assessing the overall impact of competitive ETC designations on the universal service mechanisms."⁸³ Finally, the calculations provided by Staff and ALLTEL do not make a comparison with a benchmark for an acceptable impact on the fund. Unfortunately, the Virginia Cellular Order does not provide a specific level of impact on the federal fund the FCC would consider to be substantial enough to warrant denial of an ETC

⁸⁰ Cooper Rebuttal, at p. 20, l. 5– 13.

⁸¹ *Id.* at p. 20, l. 7 – p. 21, l. 9 and Exhibit 2.

⁸² Mowery Surrebuttal, at p. 9, l. 19 – 27.

⁸³ Virginia Cellular Order. Paragraph 31.

designation. The Commission concludes that the estimated impact on the fund, approximately .80 percent, is unlikely to be viewed as significant.

Unique Advantages and Disadvantages of the Competitor's Service

39. ALLTEL argues that mobility, service quality, choice of rate plans, large local calling areas and its presence in all fifteen of Kansas' RSAs are evidence its services provide advantages over the traditional ILEC service.⁸⁴ The company also states it has nationwide calling plans available for consumers.⁸⁵ Staff echoes these advantages and acknowledges ALLTEL's wireless offering may also carry some disadvantages. Staff contends some parties claim that wireless services are provided at a lower level of service quality than landline service.⁸⁶ However, Staff suggests that universal service support could be used to improve service quality and that the Commission could develop service quality standards on all ETCs.⁸⁷ Staff stated that "dead spots" are acknowledged by FCC rules and cannot be used as evidence that a company is unwilling or incapable of providing acceptable service.⁸⁸ ITG suggests the Commission must carefully examine the number of minutes included in a plan before attributing ALLTEL's service offering with a larger calling scope. If the plan does not contain a sufficient number of minutes, the customer may pay for additional minutes whether they are for local or toll calls.⁸⁹ Mr. Cooper contends the FCC has stated that federal support cannot be used for expanded calling scopes and the grant of ETC status to a carrier with an expanded calling scope

⁸⁴ Krajci Surrebuttal, at p. 7, l. 6 – 9.

⁸⁵ *Id.* at p. 7, l. 12 – 14.

⁸⁶ Aarnes Rebuttal, p. 51, l. 21 – 23.

⁸⁷ *Id.* at p. 51, l. 24 – p. 52, l. 3.

⁸⁸ Aarnes Cross-Answering, at p. 52, l. 8 – 32.

⁸⁹ Cooper Rebuttal, at p. 22, l. 14 – p. 23, l. 6.

is not competitively neutral.⁹⁰ ITG also suggests that mobility is not a universal service and does not justify the receipt of support.⁹¹

40. The Commission finds that ALLTEL's service offerings do offer unique advantages such as mobility and larger calling scopes. The Commission tempers its finding with the understanding of local calling scopes and minutes of use offered by ITG. The Commission acknowledges that expanded calling scopes are not a supported service; however, an ETC is not limited to providing only the supported services. A network, wireless or wireline, is able to provide supported and unsupported service; however, the support received must be utilized for its intended purposes.⁹² The FCC addresses mobility in the Virginia Cellular Order, and states:

... the mobility of Virginia Cellular's wireless will provide other benefits to consumers. For example, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.⁹³

With regard to mobility, the Commission notes that an ETC is not limited to providing only the designated universal services and functionalities, only that the support must be used for its intended purpose. The Commission finds the advantages of ALLTEL's service are a greater benefit than any harm caused through disadvantages. Consumers are able to decide whether the advantages outweigh the disadvantages of ALLTEL's service offerings. If the advantages are not great enough, consumers will not subscribe to the service and ALLTEL will not receive support.

⁹⁰ Id. at p. 11, l. 18 – p. 12, l. 12.

⁹¹ Id. at p. 23, l. 6 – 10.

⁹² Staff Brief, at p. 10 – 11, paragraph 27.

⁹³ Virginia Cellular Order. Paragraph 29.

Service Quality Commitments

41. ALLTEL has committed to make modifications and additions to its existing network and to install new cell sites to improve quality of service which will result in more capacity and fewer dropped calls.⁹⁴ ALLTEL also indicates it will follow the CTIA customer code for wireless service.⁹⁵ Additionally, ALLTEL will report the number of consumer complaints per 1000 handsets to the Commission each year.⁹⁶ Staff is not opposed to the imposing of quality of service standards on ALLTEL and all other ETCs. Thus, Staff suggests the Commission open a generic proceeding to explore this issue.⁹⁷ ITG argues ALLTEL has not demonstrated a commitment to quality service.⁹⁸ Mr. Cooper contends the Commission should require ALLTEL to present a construction plan to ensure that facilities are in place.⁹⁹

42. The Commission finds that ALLTEL has met the requirements set forth in the Virginia Cellular Order by committing to comply with CTIA's Code for Wireless Service and to report the number of complaints per 1000 handsets each year. These are the same commitments accepted by the FCC. However, the Commission is interested in exploring additional quality of service standards in a generic proceeding. Docket Number 05-GIMT-187-GIT has been opened to examine current quality of service standards imposed on ILECs and CLECS. In that proceeding, the Commission has requested comment on whether the qualifying service standards should also be imposed on ETCs that are not required to be certified. Thus, the quality of service issue will be addressed further within Docket No. 05-GIMT-187-GIT.

Ability to Provide Supported Services Throughout Service Area in Reasonable Time

⁹⁴ Steinbach Surrebuttal, at p. 4, l. 3-4.; See also ALLTEL Brief. Paragraph 36.

⁹⁵ Aarnes Rebuttal, at p. 53, l. 23 – 25.; See also ALLTEL Brief. Paragraph 36.

⁹⁶ Id. at p. 53, l. 25 - 27.; See also ALLTEL Brief. Paragraph 36.

⁹⁷ Cooper Rebuttal, app. 123, l. 21 – p. 24, l. 15.

⁹⁹ Id. at p. 24, l. 14 – 15.

43. ALLTEL states it has committed to a seven-part service provision test which demonstrates the efforts it will undertake to serve requesting customers within a reasonable time.¹⁰⁰ ALLTEL will provide notice to the Commission in the event a customer cannot be served.¹⁰¹ Staff reiterated its concern with ALLTEL's commitment to provide service throughout the service area.¹⁰² ITG shares Staff's concern and suggests that additional information is necessary to address this concern.¹⁰³ SWBT also shares Staff's concern.¹⁰⁴

44. The Commission has already addressed ALLTEL's ability to provide the supported services and concluded that ALLTEL can or will be able to provide those services. See paragraphs 9-20, *supra*. Likewise, the Commission has already addressed ALLTEL's commitment to provide service throughout the designated service area. See paragraphs 21-23, *supra*. The Commission concluded that two reporting requirements would be placed on ALLTEL. At this time, the Commission will require that ALLTEL provide the Commission with maps indicating where ALLTEL has placed facilities and the approximate coverage area associated with those facilities. The Commission will also require ALLTEL to report, quarterly, any denial of requests for service. The Commission believes these requirements are sufficiently similar to the build-out plans accepted by the FCC in the Virginia Cellular proceeding and will assist in evaluating of ALLTEL's progress in meeting its obligation to provide the supported services throughout the designated service areas within a reasonable timeframe.

45. The Commission concludes that it is in the public interest to designate ALLTEL as an additional ETC in requested service areas of rural ILECs, subject to the company fulfilling the additional requirements imposed by this order and to the extent that the company's operating

¹⁰⁰ ALLTEL Brief, Paragraph 37.

¹⁰¹ *Id.*

¹⁰² Aarnes Rebuttal, at p. 54, l. 10 – 15.

¹⁰³ Cooper Cross-Answering, at p. 11, l. 10 – 12.

¹⁰⁴ SWBT Reply Brief, at p. 2, paragraph 3 – p. 4, paragraph 8.

footprint coincides with the service area of a rural ILEC. Attachment B sets out those rural service areas which ALLTEL's operating footprint covers without the need for redefinition.

Recertification Process

46. Section 254(e) of the Federal Act provides that carriers receiving universal service support shall use the support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." Each year, the Commission must provide certification to the FCC and USAC stating that ETCs use federal support in the manner for which it was intended. The Commission also requires that the support be used only in those areas when the company is designated as an ETC. Currently, the certification consists of a verified statement filed by a company executive stating the company will use the federal support as intended. The self-certification is to be provided by a person who is in a position to direct the company's expenditures. The Commission, in turn, sends letters to the FCC and USAC certifying that the companies listed within the letter have submitted certification that support would be used as intended.

47. The parties have expressed concern about the Commission's ability to monitor and verify the use of USF support.¹⁰⁵ At the hearing, Staff indicated that it was in the process of preparing a memo urging the Commission to consider a new certification process through a generic proceeding.¹⁰⁶ In their Brief, ITG and SIA state that, "[t]he evidence in the instant proceeding is entirely insufficient to assure that such certification can be made factually and reliably."¹⁰⁷ The parties further state:

Unless the Commission can assure that *all* federal support received

¹⁰⁵ Transcript. P. 14-15, 17-18, 27-28, 29-30, 51-55, 94-96, 102-103, 115-121, 129-138, 140-141, 149-154.; See also ITG/SIA Brief, at p. 1 - 8, 10 - 11, 14-16.; See Staff Reply Brief, at p. 1-3.; See ALLTEL Brief, at p. 22.; ALLTEL Reply Brief, at p. 6.

¹⁰⁶ Transcript, at p. 116, l. 3 - 6.

¹⁰⁷ ITG/SIA Brief, at p. 5, paragraph 10.

as a result of the requested designation is used for authorized purposes, then those ratepayer funds can and likely will become subsidies for costs and investment in areas unapproved for the applicant's receipt of USF support, for legally unsupported services and/or for increased shareholder dividends.¹⁰⁸ [emphasis in original]

ITG and SIA believe self-certification is insufficient for carriers that are not subjected to audits. Further, the parties doubt the current audit process would be effective in verifying ALLTEL's use of funds.¹⁰⁹ Further, ITG and SIA allege the self-certification process would permit ALLTEL and other competitive ETCs to engage in "money laundering."¹¹⁰ ITG and SIA argue that if Staff recommends a new certification procedure after the Commission addresses whether to designate ALLTEL as an ETC, Staff will be virtually assuring that requirements, if eventually imposed, would be tailored to maintain existing ETC status. Thus, no additional protection of the public interest would result."¹¹¹ ALLTEL suggests the company will provide the Commission with a list of planned projects and expenditures and will self-certify that the company uses the support appropriately.¹¹² ALLTEL cautions that capital expenditures will not capture all of the appropriate uses of federal support – provisioning, maintenance and upgrading of existing facilities and services.¹¹³

48. Since the filing of briefs in this proceeding, the Commission initiated a proceeding to examine the certification process. That investigation will occur in Docket Number 05-GIMT-112-GIT. Staff has proposed that a significant amount of data be provided for the Commission to determine whether funds have been used as intended. In that Docket, the parties can provide more detailed argument regarding whether an ETC is required to use universal

¹⁰⁸ *Id.* at p. 5, paragraph 11.

¹⁰⁹ *Id.* at p. 6, paragraphs 13 and 14.

¹¹⁰ *Id.* at p. 6, paragraph 15.

¹¹¹ *Id.* at p. 8, paragraph 19.

¹¹² ALLTEL Brief, at p. 22, paragraph 50.

¹¹³ *Id.* at p. 22, paragraph 51.

service support to incrementally increase expenditures in the designated service areas. The parties have not provided sufficient analysis for the Commission to make such a determination in this proceeding. However, the Commission concludes it is in the public interest to impose immediate reporting requirements on ALLTEL at this time. An important factor persuading the Commission that it should grant ETC status to ALLTEL is the company's willingness to provide information to the Commission on capital expenditures. In the hearing, ALLTEL committed to share its capital budget information with the Commission.¹¹⁴ The Commission requires ALLTEL to provide the following to the Commission no later than 30 days from the effective date of this order:

- a) a projection of the amount of support ALLTEL will receive from the federal USF in 2005;
- b) a capital expenditure budget for Kansas for 2005;
- c) a verified statement regarding the use of support as is currently required of all ETCs.

ALLTEL will report the above information in 2006 and include data regarding its actual expenditures in Kansas in 2005 if the Commission has not adopted another reporting format. This requirement will continue unless and until replaced by other requirements resulting from the generic proceeding.

Other Issues

49. While the Commission believes that designating ALLTEL as an ETC is reasonable, given the requirements imposed in this Order, the Commission believes certain issues have been raised by the parties that require further discussion and analysis. Therefore, the

¹¹⁴ Transcript, at p. 29, l. 19 – p. 30, l. 8.

Commission will open a generic proceeding to discuss the following issues related to ETC designations:

- a) minimum local usage;
- b) content, frequency and types of media for advertising;
- c) per-minute blocking for wireless carriers;
- d) billing standards;
- e) carrier-of-last resort responsibilities;
- f) build-out plans; and
- g) application of termination fees.

The Commission will request that interested parties provide comments on these issues. The Commission anticipates that any new ETC requirements developed in the generic proceeding will apply to any ETC wishing to retain its designation. Therefore, the Commission encourages participation by all ETCs.

IT IS, THEREFORE, BY THE COMMISSION ORDERD THAT:

- A. ALLTEL is designated as an ETC in the non-rural wire centers listed in Attachment A and the rural study areas listed in Attachment B, so long as the company commits to the additional requirements imposed by this Order.
- B. Within 60 days of the effective date of this order, ALLTEL will file a map indicating the extent of its existing infrastructure, and the approximate geographic area for which service coverage is available from such facilities. Thereafter, the map should be updated on a yearly basis and provided to the Commission by December 31 of each year.

- C. ALLTEL is required to follow the seven-part process it outlined for evaluating requests for service. Additionally, on a quarterly basis, ALLTEL is required to report all instances in which the company refuses to serve a customer (January 1, April 1, July 1 and October 1). ALLTEL will be required to provide information regarding the specific location of the customer (street address), the company's rationale for reaching the final step of the process for each customer, and the company's progress with establishing interconnection arrangements which permit resale of either wireless or ILEC services in the location of the customer the company refused to serve.
- D. The Commission directs Staff and ALLTEL to develop language used in all advertising for areas in which ALLTEL is designated as an ETC. The language should include information directing customers to the Commission's Office of Public Affairs and Consumer Protection for complaints regarding any service issues. Staff and ALLTEL shall file a status report with the Commission within 90 days of the effective date of this order informing the Commission of progress in meeting this requirement.
- E. ALLTEL will comply with CTIA's Code for Wireless Service and will report the number of complaints per 1000 handsets, for the preceding year on January 31 of each year.
- F. ALLTEL is required to provide the following to the Commission no later than 30 days from the effective date of this order:
- d) a projection of the amount of support ALLTEL will receive from the federal USF in 2005;
 - e) a capital expenditure budget for Kansas for 2005;

f) a verified statement regarding the use of support as is currently required of all ETCs.

- G. The parties have fifteen days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118; K.S.A. 2003 Supp. 77-529(a)(1).
- H. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Com.; Moffet, Com.

Dated: SEP 24 2004

ORDER MAILED

SEP 24 2004

 Executive
Director

Susan K. Duffy
Executive Director

004-ALKT-283-ETC
of the Corporation
for Susan L. White

KANSAS

CORPORATION COMMISSION

STATE CORPORATION COMMISSION

SEP 24 2004

Susan White Docket
Room

KATHLEEN SEBELIUS, GOVERNOR

BRIAN J. MOLINE, CHAIR

ROBERT E. KREHBIEL, COMMISSIONER

MICHAEL C. MOFFET, COMMISSIONER

September 24, 2004

Re: In the Matter of the Application of ALLTEL Kansas Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to Section 47 U.S.C. § 214(e)(2) of the Communications Act of 1934. Docket No. 04-ALKT-283-ETC

Dear Counsel,

Enclosed please find Attachments A and B that were inadvertently left off the ALLTEL order, which was mailed today. If you have any questions, please do not hesitate to call me at (785) 271-3196.

Sincerely,

Dana Bradbury
Dana Bradbury

Attachment A

SBC WIRE CENTERS IN WHICH
ALLTEL IS DESIGNATED AS AN ETC.

Abilene	Gypsum	Parsons
Almena	Halstead	Pawnee Rock
Andale	Hamilton	Peabody
Anthony	Hanover	Phillipsburg
Arkansas City	Harper	Pittsburg
Attica	Hartford	Plainville
Bucklin	Hays	Pratt
Beloit	Herington	Protection
Blue Rapids	Holcomb	Sabetha
Belleville	Howard	Salina
Bird City	Hoxie	Scandia
Caney	Humboldt	Scott City
Canton	Hutchinson	Sedan
Cedar Vale	Independence	Sedgwick
Chanute	Iola	Seneca
Chapman	Jewell	Severy
Chase	Kingman	Stockton
Cheney	Kinsley	Solomon
Cherryvale	La Crosse	Smith Center
Chetopa	Larned	Stafford
Clay Center	Lincoln	St. Paul
Colby	Lindsborg	Sublette
Coldwater	Lyons	Washington
Concordia	Manhattan	Waterville
Cottonwood Falls	Mankato	Wellington
Dodge City	Marion	Winfield
Ellsworth	Marquette	Yates Center
Emporia	Marysville	
Enterprise	McPherson	
Erie	Meade	
Eureka	Medicine Lodge	
Florence	Minneapolis	
Ft. Scott	Minneola	
Fowler	Moline	
Frankfort	Mount Hope	
Garden City	Neodesha	
Garden Plain	Newton	
Goddard	Nickerson	
Goodland	Oakley	
Great Bend	Ottawa	
Greensburg	Paola	

Attachment B

RURAL LEC SERVICE AREAS IN WHICH
ALLTEL IS DESIGNATED AS AN ETC.

Blue Valley Telephone Company
Bluestem Telephone/ Sunflower Telephone Company, Inc.
Columbus Telephone Company, Inc.
Council Grove Telephone Company
Cunningham Telephone Company
Elkhart Telephone Company, Inc.
Golden Belt Telephone Association
Gorham Telephone Company
H&B Communications, Inc.
Home Telephone Company
J.B.N. Telephone Company, Inc.
LaHarpe Telephone Company, Inc.
Madison Telephone Company, Inc.
Mo-Kan Dial, Inc.
Moundridge Telephone Company
Mutual Telephone Company
Peoples Telecommunications, LLC
South Central Telecommunications
Sprint/United Telephone Company- Southeast
Totah Telephone Company Inc.
Tri-County Telephone Association
Twin Valley Telephone, Inc.
United Telephone Association, Inc.
Warrego Telephone Company, Inc.
Wilson Telephone Company, Inc.
Zenda Telephone Company

CERTIFICATE OF SERVICE

04-ALKT-283-ETC

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Attachment A and B was placed in the United States mail, postage prepaid, or hand-delivered this 24th day of September, 2004, to the following:

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